

**MAR 16 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JOSEPH LAWRENCE LEVESQUE,

Petitioner - Appellant,

v.

TOM L. CAREY, Warden; et al.,

Respondents - Appellees.

No. 03-16454

D.C. No. CV-02-00901-JF

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Jeremy Fogel, District Judge, Presiding

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Joseph Lawrence Levesque appeals from the district court's dismissal of his 28 U.S.C. § 2254 habeas petition as second or successive. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Levesque mistakenly contends that the district court erred by finding that the dismissal of his prior federal habeas petition as time-barred rendered his instant petition successive. *See Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005) (holding that a prior petition dismissed based on state procedural default is a determination on the merits rendering a subsequent petition successive).

**AFFIRMED.**